

### § 1208.3

### 29 CFR Ch. X (7-1-98 Edition)

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request or the need for consultation among components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the Board records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(d) *Indexes of certain records.* (1) The National Mediation Board at its office in Washington, DC will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the FEDERAL REGISTER that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a)(2).

(i) A copy of such index shall be available at cost from the National Mediation Board, Washington, DC 20572.

(ii) [Reserved]

(2) The National Railroad Adjustment Board at its offices in Chicago, Illinois will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the FEDERAL REGISTER that such publication would be unnecessary or impracticable) a current index of the mate-

rials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a)(2).

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### § 1208.3 General policy.

(a) Public policy and the successful effectuation of the NMB's mission require that Board members and the employees of the NMB maintain a reputation for impartiality and integrity. Labor and management and other interested parties participating in mediation efforts must have assurance, as must labor organizations and individuals involved in questions of representation, that confidential information disclosed to Board members and employees of the NMB will not be divulged, voluntarily or by compulsion.

(b) Notwithstanding this general policy, the Board will under all circumstances endeavor to make public as much information as can be allowed.

### § 1208.4 Material relating to representation function.

(a) The documents constituting the record of a case, such as the notices of hearing, motions, rulings, orders, stenographic reports of the hearings, briefs, exhibits, findings upon investigation, determinations of craft or class, interpretations, dismissals, withdrawals, and certifications, are matters of official record and are available for inspection and examination during the usual business hours at the Board's offices in Washington.

(b) This part notwithstanding, the Board will treat as confidential the evidence submitted in connection with a representation dispute and the investigatory file pertaining to the representation function.

### § 1208.5 Material relating to mediation function—confidential.

(a) All files, reports, letters, memoranda, documents, and papers (hereinafter referred to as confidential documents) relating to the mediation function of the NMB, in the custody of the NMB or its employees relating to or acquired in their mediatory capacity under any applicable section of the Railway Labor Act of 1926, as amended, are hereby declared to be confidential. No such confidential documents or the

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material contained therein shall be disclosed to any unauthorized person, or be taken or withdrawn, copied or removed from the custody of the NMB or its employees by any person or by any agent of such person or his representative without the explicit consent of the NMB.

(b) However, the following specific documents: Invocation or proffer of mediation, the reply or replies of the parties, the proffer of arbitration and replies thereto, and the notice of failure of mediatory efforts in cases under section 5, First of the Railway Labor Act, as amended, are matters of official record and are available for inspection and examination.

(c) Interpretations of mediation agreements by the NMB, arising out of section 5, Second, of the Railway Labor Act, as amended, are public records and are therefore open for public inspection and examination.

### § 1208.6 Fees—duplication costs and search.

(a)(1) Unless waived in accordance with the provisions of § 1208.62, the following fees shall be imposed for the reproduction of any record disclosed pursuant to this part.

(i) *Copying of records.* Fifteen cents per copy of each page.

(ii) *Copying of microfilm.* Fifty cents per microfilm frame.

(iii) *Clerical searches.* \$1.80 for each one quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(iv) *Non-clerical searches.* \$4.10 for each one quarter hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(v) *Certification or authentication of records.* \$1.00 per certification or authentication.

(vi) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(2)(i) No charge shall be assessed for time spent in resolving legal or policy questions relating to the documents or in examining records for the purpose of deleting nondisclosable portions thereof.

(ii) No charge shall be assessed for time spent in monitoring an individual who examines documents at the Board's offices.

(3) Payment shall be made by check or money order payable to "United States Treasury."

(b)(1) No fee shall be charged for disclosure of records pursuant to this part where:

(i) The cost of providing the records is less than \$5.00.

(ii) The records are requested by a congressional committee or subcommittee, a Federal court, a Federal department or agency, or the General Accounting Office.

(2)(i) The Executive Secretary may waive payment of fees, in whole or in part, when he determines that the person making the request is indigent.

(ii) A person seeking such a determination shall petition the Executive Secretary in writing stating the reasons therefore.

(iii) Determinations made pursuant to this provision will be made within the discretion of the agency.

(3)(i) The Executive Secretary may reduce or waive payment of fees in whole or in part when he determines that such reduction or waiver is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(ii) Determinations pursuant to this provision shall be made within the discretion of the agency.

(4) No fee shall be charged if a record requested is not found or for any record that is determined to be totally exempt from disclosure.

[42 FR 43628, Aug. 30, 1977]

### § 1208.7 Compliance with subpoenas.

(a) No person connected in any official way with the NMB shall produce or present any confidential records of the Board or testify on behalf of any party to any cause pending in any court, or before any board, commission, committee, tribunal, investigatory body, or administrative agency of the U.S. Government, or any State or Territory of the United States, or the District of Columbia, or any municipality with respect to matters coming to his knowledge in his official capacity or with respect to any information contained in